

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908 SECOND APPEAL NO.580 OF 2019
WITH CA/12703/2019 IN SA/580/2019
WITH SA/581/2019 WITH CA/12704/2019
IN SA/581/2019

DILIP SHIVNARAYAN JAISWAL
VERSUS
NANDRANIBAI HARINARAYAN JAISWAL AND
OTHERS

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Mr. K.C.Sant, Advocate for appellant.
Mr. R.M.Deshmukh, Advocate for R – 1.

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CORAM : V.L. ACHLIYA,J.

DATE : 04/12/2019

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ORDER :

1. Being aggrieved and dis-satisfied by the Judgment and Order dated 29/06/2019 separately passed in R.C.A. Nos. 163/2017 and 164/2017, the appellant/original defendant No. 2 preferred these Appeals.

2. By the impugned Judgment and decree passed by trial Court, the Suit filed by respondent Nos. 1 to 4/original plaintiffs as against respondent No. 5/defendant No. 1 in respective suits came to be decreed. No decree has been passed against

appellant/original defendant No. 2.

3. Heard learned counsel for appellant and respondent Nos. 1 to 5/original plaintiffs.

4. On due consideration of the submissions advanced, I am of the view the Appeals raises no substantial question(s) of law. There are concurrent findings on facts recorded by the Courts below. It is admitted position that deceased Harinarayan Mohanlal Jaiswal acquired the suit property by registered sale deed executed in his favour by Ramcharan Mohanlal Jaiswal. In the year 1979 the sale deed in respect of suit property was executed in favour of Harinarayan Jaiswal by Ramcharan Jaiswal. After the death of Harinarayan Jaiswal, the plaintiffs become the owner of suit property.

5. It is the contention of appellant/defendant No. 2 that sale deed executed in favour of Harinarayan Jaiswal by Ramcharan Jaiswal was nominal and without consideration. The suit property was mortgaged with Mohanlal Jaiswal by one Syed Moinuddin. He could not repay the loan advanced. In the year 1963, the sale deed in respect of suit property was executed by Syed Moinuddin in the name of Ramcharan Jaiswal on the say of Mohanlal

Jaiswal.. However, Ramcharan Jaiswal not become absolute owner of suit property. The suit property was purchased in the name of Ramcharan out of joint family funds. By way of family arrangement in the year 1979, Ramcharan Jaiswal executed sale deed of suit property in favour of Harinarayan Jaiswal, which was nominal and without consideration. It is contended that the suit property is an ancestral property. The appellant/defendant No. 2 has undivided share in it. The defendant No. 1 is inducted in suit premises by defendant No. 2. He is a licensee of defendant No. 2. Plaintiff Nos. 1 to 4 have also filed Suit for partition and separate possession in respect of some of the properties. They claim these properties as ancestral properties. The appellant/defendant No. 2 is one of the defendant in said Suit, raised objection as to non inclusion of suit property in the suit for partition filed by plaintiffs. In this background the learned counsel contended that the Judgment and decree passed by trial Court and confirmed in appeal based upon improper appreciation of rival pleadings and evidence. The reasons and findings are absolutely perverse. Although the concurrent findings recorded by Courts below but same are perverse. It is submitted that appeal raises substantial question(s) of law.

6. On the other hand, learned counsel for respondents/original plaintiffs i.e. caveators opposed the admission of Appeals with contention that Appeals are devoid of merit. It is contended that there are concurrent findings on facts recorded by Courts below. Till the year 2005 the defendant No. 1 used to pay rent to respondents/plaintiffs. Thereafter, defendant No. 1 in respective suits stopped paying rent to plaintiffs. Defendant Nos. 1 and 2 got prepared false document of leave and licence. On the basis of such document, the defendant No. 1 refused to pay rent to plaintiffs. Therefore, the plaintiffs have filed Suit for recovery of possession. On due consideration of rival pleadings and evidence adduced in the case, the Suit came to be decreed in favour of plaintiffs. The defendant No. 2 though filed affidavit by way of Examination-in-Chief failed to stepped into witness box. In that view, no evidence adduced on the part of defendant No. 2 to establish his case. The Judgment and decree passed by the trial Court has been confirmed in Appeal. In this back-ground, learned counsel urged to dismiss the Appeals.

7. I have carefully considered the submissions advanced in the light of Judgment and decree passed by trial Court and confirmed in Appeal. In my view,

no case made out to entertain these Appeals. There is no perversity in any of the reasons and findings recorded by Courts below. There are concurrent findings on facts recorded by Courts below. The appellant/defendant No. 2 though raised plea that he is having share in the suit property, failed to adduce evidence. So also the appellant/defendant No. 2 has not filed any suit claiming share and decree of partition and separate possession of his share in suit property. On the contrary the plaintiffs proved their title to suit property through their deceased father who became owner of suit property by registered sale deed executed in his favour way back in the year 1979.

8. While deciding the Appeal, the first appellate Court has re-appreciated the evidence and examined the correctness of reasons and findings recorded by Courts below. On due analysis of evidence adduced in the light of contentions raised in appeal, the first appellate Court has reached to the conclusion that the reasons and findings recorded by trial Court are in consonance with the pleadings of parties and evidence adduced in the case. The first appellate Court found no perversity in any of the reasons and findings recorded by trial Court. Accordingly, dismissed the appeal.

9. Thus, there are concurrent findings on facts recorded by Courts below. It is admitted position that suit property was acquired in the year 1979 by deceased husband of respondent No. 1. The appellant/original defendant No. 2 though raised plea that suit property is an ancestral property and defendant No. 2 has undivided share in the suit property, but failed to stepped into witness box in support of his plea. There is absolutely no evidence to support the case of defendant No. 1. The decree passed by trial Court is against defendant No. 1. No decree has been passed against appellant/original defendant No. 2. In that view, there is no merit in the appeals preferred by appellant/original defendant No. 2.

10. There are concurrent findings on facts recorded by Courts below. The appeals raises no substantial question(s) of law. I am, therefore, not inclined to entertain the appeals. Accordingly, the appeals are dismissed along with civil application(s) seeking stay to the impugned Judgment and decree.

[V.L.ACHLIYA]
JUDGE